

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/04/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000796

FILED: \_\_\_\_\_

STATE OF ARIZONA

CARRIE M COLE

v.

SCOTT D DYE

DAVID M CANTOR

FINANCIAL SERVICES-CCC  
REMAND DESK CR-CCC  
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. 010561

Charge: CT 1. DUI

CT 2. BAC OF .10 OR MORE WITHIN TWO HOURS OF  
DRIVING

CT 3. EXTREME DUI

DOB: 08/30/55

DOC: 09/25/99

This Court has jurisdiction of this appeal pursuant to the  
Arizona Constitution Article VI, Section 16, and A.R.S. Section  
12-124(A).

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This matter has been under advisement since May 6, 2002 when the Court vacated oral argument when counsel for Appellant failed to appear. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice.

Appellant was arrested on September 25, 1999 and charged with Driving While the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Level in excess of .10, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382(A); and two civil traffic violations which are not part of the instant proceedings. On April 19, 2001, the charges were dismissed without prejudice. The three misdemeanor charges were later refiled, and those charges are the subject of this appeal. On October 23, 2001, the case was submitted to the trial court for a bench trial on a stipulated record. At the conclusion of the trial, Appellant was found guilty of all three charges. Appellant has filed a timely Notice of Appeal in this case.

Appellee argues that Appellant has failed to include the entire record of all proceedings pertinent to Appellant's claim of a denial of his right to a speedy trial. Admittedly, Appellant has failed to include any portions of the record relating to the prior dismissal without prejudice. Appellant's arguments that the trial judge who dismissed the case without prejudice erred must fail, as Appellant has failed to include any portions of that record within the record on appeal in this case. The law in Arizona is well settled that an appellate court must presume that a missing record supports the decision made by the trial court.<sup>1</sup>

Appellee urges this Court to dismiss the appeal; however, Appellant also argues that he was denied his right to a speedy

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<sup>1</sup> Lewis v. Oliver, 178 Ariz. 330, 873 P.2d 668 (App. 1993).

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trial in this case, and this Court is able to review that legal issue *de novo*. The right to a speedy trial is guaranteed by Article II, Section 24 of the Arizona Constitution. Appellant claims in this case that he was denied his right to a speedy trial because the State moved to dismiss the original charges without prejudice, and after their motion was granted, refiled all of the charges against Appellant. Appellant argues that he was prejudiced as the result of the delays in this case. Appellant's argument relies upon several exhibits which are attached to his memorandum. This Court cannot consider matters which were not part of the trial court's record. This Court cannot consider "new evidence" in its disposition of an appeal from a lower court.

IT IS THEREFORE ORDERED striking all exhibits from Appellant's memorandum.

Turning to Appellant's claim that he was severely prejudiced by the delay of his trial because he suffered "severe ramifications", this Court notes that the term "prejudice" refers to "legal prejudice" suffered by a Defendant as the result of unreasonable delays in criminal proceedings. Additionally, the trial court's record does not support Appellant's claim that he was prejudiced in any way. Certainly, it is Appellant's responsibility to demonstrate prejudice resulting from the unreasonable delay of his trial in order to sustain his claim of a denial of his right to a speedy trial under the Arizona Constitution.<sup>2</sup>

Since Appellant has been unable to demonstrate legal prejudice as the result of delays of his trial, Appellant's arguments must fail.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Scottsdale City Court in this case.

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<sup>2</sup> See State v. Mendoza, 109 Ariz. 445, 511 P.2d 627 (1973).  
Docket Code 513

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IT IS FURTHER ORDERED remanding this matter back to the  
Scottsdale City Court for all further and future proceedings in  
this case.